

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Leonardo Maldonado,
Plaintiff,

Hon. Hugh B. Scott

08CV363
Consent

v.

**Decision
&
Order**

Brian Fischer, et al.,
Defendant.

Before the Court is the defendant's motion for summary judgment. (Docket No. 13). The plaintiff was directed to submit a response to the motion by September 21, 2009. (Docket No. 17). The Court's Order directing that a response be submitted also included notice pursuant to Irby v. New York City Transit Authority, 262 F 3d 412 (2d Cr 2001) explaining the nature of the motion and the need for the plaintiff to respond. The notice also advised the plaintiff, in bold all capital letters, that the complaint in this matter may be dismissed if he failed to respond. See (Docket No. 17). The plaintiff failed to submit any response to the instant motion. The Order (Docket No. 17) was returned to the Court as undeliverable (See Docket entry dated September 8, 2009). A new notice was sent to the plaintiff at a new address obtained by the Pro Se Office staff. The second notice, dated October 13, 2009, directed the plaintiff to respond to the motion for summary judgment by October 30, 2009. (Docket No. 18). The second notice again included language pursuant to Irby, and again advised the plaintiff, in bold all capital letters, that

the complaint in this matter may be dismissed if he failed to respond. (Docket No. 18). The plaintiff has still not responded to the motion or otherwise contacted the Court.

Under the circumstances of this case, the plaintiff is deemed to have abandoned his claims in this matter. The complaint is dismissed based upon the plaintiff's failure to prosecute this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

The motion for summary judgment (Docket No. 21) is denied as moot.

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
March 17, 2010